

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

Clerk's Minutes
Before the Honorable James O. Browning

CASE NO. CIV 24-0471 JB/SCY **DATE:** 6/27/2024

TITLE: *Ortega, et al. v. Lujan Grisham, et al.*

COURTROOM CLERK: L. Rotonda **COURT REPORTER:** J. Bean

COURT IN SESSION: 8:55 AM **TOTAL TIME:** 6:05

TYPE OF PROCEEDING: MOTION HEARING

COURT RULING/DISPOSITION:

1. PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION (DOC. 2) – TAKEN UNDER ADVISEMENT.

ATTORNEYS PRESENT FOR PLAINTIFF(S): **ATTORNEYS PRESENT FOR DEFENDANT(S):**

Mike McCoy
Robert Welsh
Sean Nation
Carter Harrison

Holly Agajanian
Kyle Duffy
Mark Allen

PROCEEDINGS:

COURT IN SESSION: 8:55 AM

COURT: CALLS CASE, COUNSEL ENTER APPEARANCES.

QUERIES COUNSEL AS TO WHETHER EITHER PARTY WISHES TO INVOKE RULE, COUNSEL FOR DEFENDANTS CONFIRMS DOES WISH TO INVOKE SAME. DIRECTS COUNSEL TO ADDRESS COURT AND CLARIFY WHICH WITNESSES SHOULD BE ADMITTED.

ADDRESSES COUNSEL AT OUTSET OF HEARING REGARDING COURT'S VIEW OF RELEVANT LEGAL LANDSCAPE, AREAS WHERE COURT PERCEIVES AMBIGUITIES.

MR. HARRISON: DELIVERS OPENING STATEMENT ON BEHALF OF PLAINTIFFS.

COURT: QUERIES MR. HARRISON REGARDING PRESUMPTIVELY CONSTITUTIONAL THEORY AND RELEVANT HOLDINGS IN SCOTUS CASES, HISTORICAL ANALOGUES, COMMERCIAL SALE

RESTRICTIONS.

MR. HARRISON: RESPONDS TO COURT’S QUERIES.

MR. DUFFY: DELIVERS OPENING STATEMENT ON BEHALF OF DEFENDANTS.

COURT: QUERIES MR. DUFFY REGARDING REGULATORY FRAMEWORK OUTLINED BY COURT,
HISTORICAL ANALOGUE ISSUES.

MR. DUFFY: RESPONDS TO COURT’S QUERIES, RESUMES OPENING STATEMENT.

MR. MCCOY: PLAINTIFF CALLS REBECCA SCOTT (SWORN), QUESTIONS ON DIRECT EXAMINATION.
MOVES FOR ADMISSION OF PLAINTIFFS’ EX. NOS. 1, 2.

MS. AGAJANIAN: NO OBJECTIONS.

COURT: WILL ADMIT PLAINTIFFS’ EX. NOS. 1, 2.

MS. AGAJANIAN: QUESTIONS MS. SCOTT ON CROSS EXAMINATION.

MR. MCCOY: QUESTIONS MS. SCOTT ON REDIRECT EXAMINATION.

MS. AGAJANIAN: QUESTIONS MS. SCOTT ON RECROSS EXAMINATION.

COURT: EXCUSES MS. SCOTT FROM PROCEEDINGS.

MR. MCCOY: PLAINTIFFS CALL PAUL ORTEGA (SWORN), QUESTIONS ON DIRECT EXAMINATION.

COURT IN RECESS: 10:31 AM

COURT IN SESSION: 10:48 AM

MR. MCCOY: RESUMES QUESTIONING MR. ORTEGA ON DIRECT EXAMINATION.

MS. AGAJANIAN: QUESTIONS MR. ORTEGA ON CROSS EXAMINATION.

COURT: EXCUSES MR. ORTEGA FROM PROCEEDINGS.

MR. WALSH: PLAINTIFF CALLS ROBERT POHL (SWORN), QUESTIONS ON DIRECT EXAMINATION.

MS. AGAJANIAN: QUESTIONS MR. POHL ON CROSS EXAMINATION.

COURT: EXCUSES MR. POHL FROM PROCEEDINGS.

MR. HARRISON: PLAINTIFFS CALL PROFESSOR F. LEE FRANCIS (SWORN – APPEARING REMOTELY),

QUESTIONS ON CROSS EXAMINATION.

MOVES FOR ADMISSION OF PLAINTIFFS' EX. NOS. 3, 4, 5, 6.

MS. AGAJANIAN: NO OBJECTIONS.

COURT: WILL ADMIT PLAINTIFFS' EX. NOS. 3, 4, 5, 6.

MR. HARRISON: RESUMES QUESTIONING PROFESSOR FRANCIS ON DIRECT EXAMINATION.

MOVES TO RECOGNIZE PROFESSOR FRANCIS AS EXPERT WITNESS.

MR. ALLEN: NO OBJECTION, RESERVES RIGHT TO *VOIR DIRE* WITNESS IF NECESSARY.

COURT: WILL PERMIT PROFESSOR FRANCIS TO PROVIDE EXPERT WITNESS TESTIMONY.

MR. HARRISON: RESUMES QUESTIONING PROFESSOR FRANCIS ON DIRECT EXAMINATION.

MR. ALLEN: QUESTIONS PROFESSOR FRANCIS ON CROSS EXAMINATION.

COURT IN RECESS: 12:00 PM

COURT IN SESSION: 1:02 PM

MR. ALLEN: RESUMES QUESTIONING PROFESSOR FRANCIS ON CROSS EXAMINATION.

COURT: EXCUSES PROFESSOR FRANCIS FROM PROCEEDINGS.

MR. HARRISON: INDICATES PLAINTIFFS HAVE NO FURTHER WITNESSES OR EVIDENCE.

MR. DUFFY: DEFENDANTS CALL PROFESSOR RANDOLPH ROTH (SWORN – APPEARING REMOTELY),

QUESTIONS ON DIRECT EXAMINATION.

MOVES TO HAVE PROFESSOR ROTH RECOGNIZED AS AN EXPERT WITNESSES.

MR. NATION: OBJECTS ON BASIS OF RELEVANCY.

COURT: WILL PERMIT WITNESS TO PROVIDE EXPERT WITNESS TESTIMONY, WILL DETERMINE RELEVANCY AT LATER POINT.

MR. DUFFY: RESUMES QUESTIONING PROFESSOR ROTH ON DIRECT EXAMINATION.

MR. NATION: QUESTIONS PROFESSOR ROTH ON CROSS EXAMINATION.

COURT IN RECESS: 2:32 PM

COURT IN SESSION: 2:54 PM

MR. NATION: RESUMES QUESTIONING PROFESSOR ROTH ON CROSS EXAMINATION.

COURT: EXCUSES PROFESSOR ROTH FROM PROCEEDING.

MR. DUFFY: INDICATES DEFENDANTS HAVE NO FURTHER EVIDENCE OR WITNESSES.

MR. MCCOY: INDICATES PLAINTIFFS DO NOT WISH TO PRESENT REBUTTAL EVIDENCE.

DELIVERS CLOSING STATEMENT ON BEHALF OF PLAINTIFFS, ARGUES IN SUPPORT OF PLAINTIFFS'

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION (DOC. 2).

COURT: QUERIES MR. MCCOY.

MR. MCCOY: RESPONDS TO COURT'S QUERIES, RESUMES ARGUMENT.

MR. DUFFY: DELIVERS CLOSING STATEMENT ON BEHALF OF DEFENDANTS, ARGUES IN OPPOSITION TO MOTION.

COURT: QUERIES MR. DUFFY.

MR. DUFFY: RESPONDS TO COURT'S QUERIES, RESUMES ARGUMENT.

MR. MCCOY: ARGUES IN REBUTTAL AS TO MOTION.

MR. HARRISON: ADDRESSES COURT REGARDING SUPPLEMENTAL BRIEFING PARTIES WISH TO FILE, ORALLY MOVES COURT TO EXPAND PAGE LIMITS.

COURT: QUERIES COUNSEL REGARDING TIMEFRAME WITHIN WHICH PARTIES WOULD LIKE FOR COURT TO ISSUE OPINION.

MR. HARRISON: REQUESTS THAT OPINION BE ISSUED WITHIN 2 WEEKS OF PARTIES' SUPPLEMENTAL BRIEFING.

COURT: CONFIRMS WILL FILE BY CLOSE OF BUSINESS ON JULY 22, 2024.

PROVIDES COURT'S INCLINATION AS IT LEAVES BENCH, SHOULD COUNSEL WISH TO ADDRESS THESE POINTS IN BRIEFING.

MR. NATION: PROVIDES CITES TO CASES REFERENCED.

COURT: THANKS COUNSEL FOR PRESENTATIONS.

COURT IN RECESS: 4:41 PM